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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/722,398

11/28/2003

Reingard Hiesinger

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06/28/2004

JACOBSON, PRICE, HOLMAN & STERN
PROFESSIONAL LIMITED LIABILITY COMPANY
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Washington, DC 20004

EXAMINER

SMITH, ARTHUR A

ART UNIT

PAPER NUMBER

2851

DATE MAILED: 06/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n N .

10/722,398

Applicant(s)

HIESINGER, REINGARD

AK

Examin r

Arthur A Smith

Art Unit

2851

-- The MAILING DATE f this communication appears on the cover sh t with th correspond nce address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 12-14, 16, 17, 19, 21 and 22 is/are rejected.
- 7) ☒ Claim(s) 8-11, 15, 18, 20 and 23-25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, 7, 12-14, 16, 17, 19, 21 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Oglesbee (US 5235368).

In reference to claim 1, Oglesbee discloses a variable background for photographic pictures, comprising a flexible basic body, ref. 8, which supports (based on the disclosure the examiner has interpreted “support” to mean to provide a “prop for” and not to “hold up”) the object which has to be photographed and at least one adjustment device for modifying the shape of the basic body, col. 1 lines 5-14 and col. 2 lines 53-58.

In reference to claims 2 and 4, Oglesbee discloses wherein the background is characterized in that the flexible basic body is formed by a translucent, colourless and/or coloured foil, plastic foil, by paper, respectively cardboard, or by a flexible metal foil, col. 1 lines 22-23.

In reference to claim 3, Oglesbee discloses the flexible basic body has such a stiffness that it can take different shapes, however, keeps an even surface when the shape is modified, col. 4 lines 7-32 and see fig. 1.

In reference to claim 6, Oglesbee discloses wherein at least on one of the cross sides of the flexible basic body reinforcements, ref. 40, preferably by means of metal bows, plastic reinforcements or the like are provided, col. 3 lines 52-69.

In reference to claim 7, Oglesbee discloses wherein the flexible basic body can be brought into an angled position by means of the adjustment device wherein the angle can be chosen freely and can be modified freely, according to the photographic picture, respectively photo technique, col. 4 lines 7-28 and see fig. 1.

In reference to claim 12, Oglesbee discloses wherein the basic body is designed in such a way that it can be put on a frame, in particular be put fixedly, see fig. 2.

In reference to claims 13, 14, 16, 17 and 19, Oglesbee discloses wherein the frame consists of at least three parts, wherein the individual parts can be connected to each other by means of inserted connectors (tubular connection) or by joints which can be fixed (see fig. 1 connection of ref. 12 and ref. 170), col. 3 lines 14-38.

In reference to claim 21, Oglesbee discloses wherein a light source can be arranged below, respectively before or behind, the variable background, col. 2 lines 40-58.

In reference to claim 22, Oglesbee discloses wherein a repro column, ref. 26, is provided which can be fastened to the frame, see fig. 1.

Claims 1, 2, 4 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Fleming-Schaub (US 5619299).

In reference to claim 1, Fleming-Schaub discloses a background comprising a flexible basic body, ref. 12, which supports (based on the disclosure the examiner has

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interpreted "support" to mean to provide a "prop for" and not to "hold up") the object which has to be photographed and at least one adjustment device, ref. 16, 13 and 15, for modifying the shape of the basic body, col. 5 lines 5-12.

In reference to claims 2 and 4, Fleming-Schaub discloses wherein the background is characterized in that the flexible basic body is formed by a translucent, colourless and/or coloured foil, plastic foil, by paper, respectively cardboard, or by a flexible metal foil, col. 3 lines 32-35 and col. 5 lines 13-19.

In reference to claim 21, Fleming-Schaub discloses wherein a light source can be arranged below, respectively before or behind, the variable background, see figs. 6 and 6a.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fleming-Schaub (US 5619299) in view of McNamara (US 5993334).

Fleming-Schaub discloses a background comprising a flexible basic body, ref. 12, which supports (based on the disclosure the examiner has interpreted "support" to mean to provide a "prop for" and not to "hold up") the object which has to be photographed and at least one adjustment device, ref. 16, 13 and 15, for modifying the shape of the basic body, col. 5 lines 5-12. Fleming-Schaub does not disclose wherein

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the adjustment device is indicated by openings, obtained at least on one side of the flexible basic body by means of punchings, through which a string, a fiber or the like is guided alternatively, respectively S-like, wherein at least one end of the string can be fixed by means of a fixing means. McNamara discloses a background wherein the adjustment device is indicated by openings, ref. 28, obtained at least on one side of the flexible basic body, ref. 12, by means of punchings, through which a string, a fiber or the like is guided, ref. 60, alternatively, respectively S-like, see fig. 1, wherein at least one end of the string can be fixed by means of a fixing means, col. 3 line 64 – col. 4 line 15. It would have been obvious to one of ordinary skill in the art at the time the invention was made to realize that the Fleming-Schaub background could be modified to incorporate the adjustment device of McNamara. Fleming-Schaub teaches that different adjustment devices could be used, see col. 6 lines 8-11, one would be motivated to use the particular adjustment device of McNamara in order to provide a user with a more simplified method of adjusting the shape of the backdrop, see McNamara, col. 4 lines 16-36 (note: method similar to raising window blinds).

Allowable Subject Matter

Claims 8-11, 15, 18, 20, and 23-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

In reference to claim 8, the prior art fails to teach or anticipate the claimed limitation of wherein at least two or more angulations of the flexible basic body are provided.

In reference to claim 9, the prior art fails to teach or anticipate the claimed limitation of wherein the basic body has such a stiffness that the basic body forms a tunnel if opposite sides of the basic body are linked and tensioned by means of the adjustment device.

In reference to claim 10, the prior art fails to teach or anticipate the claimed limitation of wherein through tensioning of the flexible basic body by means of the adjustment device, respectively another fixing means, the basic body assumes the shape of a tent, a tube or the shape of a cone, respectively of a truncated cone.

In reference to claim 11, the prior art fails to teach or anticipate the claimed limitation of wherein the longitudinal sides of the basic body fastening devices, preferably as a Velcro fastener, by means of snap fasteners or as zip fastener are provided by means of which the basic body can be fastened to a support or the like.

In reference to claim 15, the prior art fails to teach or anticipate the claimed limitation of wherein the inserted connectors are available in different angles.

In reference to claim 18, the prior art fails to teach or anticipate the claimed limitation of wherein the basic body is designed in such a way that it can be put on a frame, in particular put fixedly, and the frame consists of flexible profiles and the flexible profiles are arranged as adjustment device on the flexible basic body.

In reference to claim 20 and 25, the prior art fails to teach or anticipate the claimed limitation of wherein at least part of the taking region is formed by an opaque slab which preferably can be also fastened to, respectively at, the frame.

In reference to claim 23, the prior art fails to teach or anticipate the claimed limitation of wherein all parts of the variable background are stored in such a way that they are fixed in it during transport and are in particular protected against concussions and damages.

In reference to claim 24, the prior art fails to teach or anticipate the claimed limitation of wherein the frame and the flexible basic body comprise a flexible photograph desk.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur A Smith whose telephone number is (571) 272 2129. The examiner can normally be reached on Monday - Thursday from 8:00 AM to 5:30 PM. The examiner can also be reached on alternate Fridays during the same hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz can be reached on 571-272-2180. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AAS
June 23, 2004



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